

9 FAM 42.32(c) Notes Employment-based Third Preference Immigrants

9 FAM 42.32(c) N1 Defining “Skilled Worker”

(TL:VISA-54; 2-28-92)

INS regulations define a “skilled worker” as one who, at the time of petitioning, is capable of performing skilled labor, requiring at least 2 years training or experience, not of a temporary or seasonal nature, and for which there are no qualified workers available in the United States. Relevant post-secondary education may be considered as training for the purposes of this provision.

9 FAM 42.32(c) N2 Defining “Profession”

(TL:VISA-54; 2-28-92)

INA 101(a)(32) defines “profession” as including, “but not limited to, architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries.” INS has also held that an occupation may generally be considered to be a “profession” within the meaning of INA 101(a)(32) if the attainment of a baccalaureate degree is usually the minimum requirement for entry into that occupation.

9 FAM 42.32(c) N3 Defining “Other Worker”

(TL:VISA-54; 2-28-92)

INS regulations define “other worker” to mean a qualified alien capable, at the time of petitioning, of performing unskilled labor, requiring less than two years training, not of a temporary or seasonal nature, and for which there are no qualified workers available in the United States.

9 FAM 42.32(c) N4 Labor Certification/Petition Requirement

(TL:VISA-54; 2-28-92)

The consular officer shall not issue an immigrant visa to any third preference employment-based immigrant until the consular officer is in receipt of an approved petition accompanied by a labor certification granted by the Department of Labor, evidence that the alien's occupation is on the Department of Labor's Schedule A or evidence to establish that the alien qualifies for one of the shortage occupations in the Department of Labor's Labor Market Information Pilot Program.

9 FAM 42.32(c) N5 Significance of Approved Preference Petition

(TL:VISA-54; 2-28-92)

A certification under INA 212(a)(5)(A) is included in the approval of the preference petition. The Immigration and Naturalization Service is responsible for determining the eligibility of an alien for preference immigrant status. Consular officers shall not readjudicate the petition, but rather shall review the petition to determine whether:

- (1) The supporting evidence is consistent with the approval;
- (2) There was any misrepresentation of a material fact; and
- (3) The alien meets the requirements of the employment offered.

9 FAM 42.32(c) N6 Spouse and Children

(TL:VISA-54; 2-28-92)

The spouse, or the child of a marriage which existed at the time of the principal alien's admission into the United States, is entitled to derivative status and may accompany or follow to join the principal applicant. A spouse or child acquired subsequent to the principal alien's admission is not entitled to derivative status.